IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5033 of 2007()

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CRIME NO.507/07 OF KASARAGOD POLICE STATION

: PETITIONERS/ACCUSED:

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1. THOMAS RODRIGUS, AGED 32 YEARS,
S/O. DANIAL RODRIGUS, RESIDING AT ANANTHODU,
KOLLANGANAM, MADHUR VILLAGE, KASARAGOD DISTRICT.

2. STANY RODRIGUS, AGED 30 YEARS,
S/O. DANIAL RODRIGUS, RESIDING AT ANANTHODU,
KOLLANGANAM, MADHUR VILLAGE, KASARAGOD DISTRICT.

3. ROBERT RODRIGUS, AGED 34 YEARS,
S/O. DANIAL RODRIGUS, RESIDING AT ANANTHODU,
KOLLANGANAM, MADHUR VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT:

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STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM REPRESENTING S.H.O
KASARAGOD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.5033 of 2007**

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**Dated this the 20th day of August, 2007**

**ORDER**

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations, inter alia, under Sections 452 and 324 I.P.C. Altogether there are 3 accused. The alleged incident took place on 24.07.07. The defacto complainant's house was trespassed upon and he was allegedly attacked by the accused persons. The alleged motive is the impression which the accused entertained that the defacto complainant had furnished information to the excise officials which had resulted in a raid of the premises of the accused. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is animosity between the parties. Hence false allegations are being raised.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the injuries suffered are simple. But the incident took place when the accused persons trespassed into the peace of the residence of the defacto complainant. There are no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. I find merit in the opposition by the learned Public Prosecutor . The offence includes the non bailable offence punishable under Section 452 I.P.C. I find no reason to justify the invocation of the discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**(R.BASANT, JUDGE)**

rtr/-